

**Sears, Roebuck and Co. and International Brotherhood of Electrical Workers, Local Union 349, affiliated with the AFL-CIO, Petitioner. Case 12-RC-7861**

October 31, 1995

**DECISION ON REVIEW AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND TRUESDALE

On August 17, 1995, the Board granted the Employer's request for review of the Regional Director's Decision and Direction of Election, which, *inter alia*, excluded the approximately 100 maintenance agreement (MA) sales employees from the districtwide unit found appropriate. The election was held as scheduled on August 17 and 18, 1995, and the ballots were impounded pending the Board's Decision on Review. No briefs on review were filed.

The Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record, we have decided to reverse the Regional Director's decision with respect to the issue on review, and we find that the MA sales employees must be included in the unit found appropriate.

The Regional Director found appropriate a unit consisting of all full-time and regular part-time service technicians, technician helpers, installers, support specialists, and the truck mechanic assigned to the Employer's Miami Service District. The record shows that the unit employees and the MA sales employees are hourly paid, eligible for overtime pay, receive common fringe benefits, and work similar work hours. They are subject to the same work rules, company personnel policies, and employee handbook. Time, payroll records, and personnel files for all Miami Service District employees, including the MA sales employees, are centrally maintained and administered by the Employer.

In finding that MA sales employees have a sufficiently separate community of interest from all other employees assigned to the Miami Service District such that inclusion of the MA sales employees was not required in the otherwise overall unit of district employees, the Regional Director relied on what she considered to be the MA sales employees' separate work location, dissimilar job duties, and separate immediate supervision. The record, however, does not support the Regional Director's findings because the evidence reveals that the MA sales employees work near, interact with, and share common supervision with at least the MA support specialists, who are included in the unit.

As of the date of the hearing, June 20, 1995, the Employer's Miami Service District had facilities located at Opa Locka (the district headquarters), Miami

Airport, Key West, Miami Lakes, and South Dade. At that time, the MA sales employees and most of the MA support specialists worked in adjacent areas on the second floor of the Miami Airport facility, while the technicians and support specialists assigned to that facility worked on the first floor of the building. The record establishes that, effective July 2, 1995, a new district headquarters at Doral was scheduled to replace the facilities at Opa Locka and Miami Airport. As noted by the Regional Director, two-thirds of the district employees, or approximately 286 employees, including the 100 MA sales employees working at the Miami Airport facility, were to be assigned to the new one-story building at Doral. There is no indication that these operational changes have not occurred as planned.<sup>1</sup>

In finding that the MA sales employees are segregated from other employees in the unit, the Regional Director emphasized that those employees and "some" support specialists work on a separate floor and punch a separate timeclock from the 11 technicians and an undetermined but small number of support specialists working on the first floor of the Miami Airport facility. This approach, however, obscures the close working proximity and integration that exists between the MA sales employees and the MA support specialists. Furthermore, the Regional Director incorrectly viewed the recent transfer of MA sales employees and the unit employees to the new Doral headquarters as having no bearing on the issues presented here. The record shows that, with the opening of the Doral facility, the MA sales employees will have even more contact with unit employees because, unlike the layout at the Miami Airport facility, there is only one floor at the new Doral facility. See *Sears, Roebuck & Co.*, 160 NLRB 1435 (1966) (telephone service clericals who work in close proximity to unit employees were included in the service department unit).

In drawing comparisons about job duties, the Regional Director found that there is minimal and infrequent functional overlap between unit employees and the MA sales employees. Although the record shows that all unit employees are expected to sell maintenance agreements to some extent, the Regional Director considered the job duties of the MA sales employees to be only tangentially related to those of the unit employees. The Regional Director also focused exclusively on the MA sales employees' primary role to solicit customers to purchase maintenance agreements, and gave insignificant weight to the several related tasks performed by the MA sales employees and unit employees alike. For example, the 21 MA support spe-

<sup>1</sup> Indeed, the Petitioner does not contest the Employer's assertion in its request for review that the transfer of operations to Doral took place as scheduled, and that all employees now work on one floor of the Doral facility.

cialists update customer histories from service orders submitted by the technicians; process cancellation of maintenance agreements and refunds; handle paperwork generated in the sale of maintenance agreements; assist technicians in handling questions concerning maintenance agreements and the coverage, age, and service history of merchandise; and train technicians on selling maintenance agreements, imparting sales strategies and techniques for closing sales. The record establishes that the MA sales employees engage in many of these same activities, including training technicians and communicating with them concerning maintenance agreements.

We further find that the Regional Director incorrectly discounted the fact that the MA sales employees and the MA support specialists share immediate supervision by the two MA supervisors and the MA sales manager. It is true that the MA support specialists also report to another supervisor, the support manager, who periodically visits the Miami Airport facility, but this

additional supervision does not eliminate nor detract from the onsite supervision shared by the MA sales employees and the MA support specialists on a day-to-day basis. See *Sears, Roebuck & Co.*, 227 NLRB 1403 (1977) (telephone solicitors who are supervised by the manager who is also in charge of the unit employees are included in the unit).

In sum, we find that the MA sales employees do not have a sufficiently separate community of interest to warrant their exclusion from the unit found appropriate.

#### ORDER

The Regional Director's Decision and Direction of Election is reversed with respect to the issue on review, and the unit found appropriate is modified specifically to include maintenance agreement sales employees. The proceeding is remanded to the Regional Director for further appropriate action.